



**SPECIAL COMMON COUNCIL MEETING  
JANUARY 3, 2011  
6:00 P.M.**

<b>Regular Meeting</b>	The Special meeting of the Common Council of the City of Middletown was held in the Council Chamber of the Municipal Building on Monday, January 3, 2011 at 6 p.m.
<b>Present</b>	Deputy Mayor Joseph E. Bibisi; Council Members: Thomas J. Serra, Vincent J. Loffredo, Ronald P. Klattenberg, Philip J. Pessina, Gerald E. Daley, Robert P. Santangelo Hope P. Kasper James B. Streeto, Grady L. Faulkner, Jr., Deborah A. Kleckowski, David Bauer; Sergeant-at-arms Acting Chief of Police Patrick McMahon; and Common Council Clerk Marie O. Norwood.
<b>Absent</b>	Mayor Sebastian N. Giuliano and Corporation Counsel William Howard.
<b>Also Present</b>	William Russo, Director of Public Works, Faith Jackson, Director of Human Relations, Guy Russo, Director of Water and Sewer, Philip Cacciola, Director of Consumer Protection, Dr. Joseph Havlicek, Director of Health, Timothy Lynch, Acting City Attorney, Gary Ouellette, Fire Chief, William Warner, Director of Planning, Conservation, and Development, Carl Erlacher, Director of Finance, Debra Milardo Director of Personnel and ten members of the public
<b>Meeting Called to Order</b>	The Chair calls the meeting to order at 6:06 p.m. and asks Councilman Loffredo to lead the public in the Pledge of Allegiance.
<b>Call of Meeting Read</b>	The Call of the meeting is read and accepted. The Deputy Mayor declares this call a legal call and the meeting a legal meeting.
<b>Workshop Opens</b>	<p>Councilman Streeto asks to address questions to the Acting Chief of Police. We talked about letters sent to part time Board of Education employees involving criminal trespass and I asked if you were involved and if it was appropriate to put that in a letter. Acting Chief McMahon responds if called to do it, they would make an arrest on the Mayor's say so if there was probable cause. They document their investigation. Councilman Streeto asks if they would lie. The Acting Chief states if you are told not to be in a certain place and you go, it fits the letter of the statute. Councilman Streeto states you did not put the language in the letter and were not consulted about the language. Acting Chief McMahon states he was consulted about if a person shows up where they shouldn't be, is it criminal trespass. Councilman Streeto asks if he was told about the circumstances surrounding it or was it general. Acting Chief McMahon responds he knew it involved those employees and who had a right to be where. He was only asked if someone is told not to be there by the person who has that responsibility, would it constitute criminal trespass. Councilman Streeto asks about the police escort for Mr. Oliver into the schools and were you consulted on that. The Acting Chief states he is not sure what Councilman Streeto is discussing. Councilman Streeto states when Mr. Oliver went into the school, he had a police escort. Acting Chief McMahon responds it didn't come from him; he wasn't working at the time.</p> <p>Councilman Pessina asks for the Director of Planning and asks about the demo fund and we received an email and you had attempted to sell the property (on Portland Street). Mr. Warner states there was a foreclosure sale and it was advertised, but no one bid on it and the opening bid was \$37,000 for four units. Councilman Pessina states he was reading prior to the meeting and email with the shortage of housing and economic conditions, he asks if his office attempted to contact Broadpark to see if they were interested in renovating it or Habitat for Humanity. Mr. Warner states the only involvement was after the City foreclosed on it and it became a liability and Deputy Mayor Bibisi contacted him. No one wants to put \$65,000 into a dumpster if there is a use for it. He contacted NEAT and Habitat and they were not interested in it and he sent an email to every housing organization out there and offering \$65,000 block grant money, but no one took it. The size of lot, configuration, lead in the buildings, it won't sell. Councilman Pessina asks if that is the same for the house on Wadsworth Street. Mr. Warner responds that house is the State of Connecticut. Councilman Pessina states he would like people to have the opportunity to step in for needy families. Mr. Warner responds it is the extent of lead in the building. It has to be lead safe and it is a lot of work and the City does not want to transfer it to a family with children and there ends up to be lead poisoning.</p>

Councilman Pessina states he feels more comfortable. Acting Chair Bibisi states it is loaded with asbestos and it will cost us \$50,000 to clear the asbestos. It comes down on the street every time it rains and snows. We need to remediate it. The building is a wreck. The copper tubing has been stripped. Councilman Pessina states this is information I am just receiving and I feel confident we have done everything we can do. Mr. Warner comments February is the deadline and the City can move quickly. The last thing we want is the dead of winter and people get in and start a fire to get warm. If some one has a proposal that can be done right away, we can move. Councilman Pessina states the parcel of land will it to go to Broadpark or Habitat if they decided to build. Mr. Warner responds the lot is only 30 feet wide and 150 feet long. The neighboring property owner who owns three buildings is interested in decreasing the density of his property and is interested in the land.

Acting Chair Bibisi recognizes Councilman Klattenberg who states not this director.

Councilman Streeto has questions for Mr. Warner. He asks for the record if we quick claim the building for \$1 who then quick claims to someone else and someone else with children, and if they have lead poisoning, they could sue us all. Mr. Warner responds states yes. Councilman Streeto states they could sue the City. Mr. Warner responds yes.

Councilman Loffredo asks about the outstanding taxes. Mr. Warner states taxes, sanitation, and water and sewer; water and sewer is owed \$13,000; sanitation, \$6,000; taxes, \$13,000, and foreclosure fees means \$37,000. Councilman Loffredo states the ability of the City to recoup the losses, will we take actions against the owner who abandoned the property. Mr. Warner states Attorney Lynch can answer that, but foreclosure wipes it all out. Attorney Lynch comes forward and states it doesn't wipe out the debt; they can look to the owners. We can investigate that. Councilman Loffredo asks that they report back to the Council. Attorney Lynch responds yes.

Councilman Klattenberg asks to direct questions to Guy Russo, Director of Water and Sewer. He asks about the \$700,000 shoreline protection program and asks how much area is being improved and how much is shoreline and where did the figure come from. Mr. Russo responds it is 1100 linear feet along the River Road wellfield. They have had a number of areas 1 and 3 dating back to 1967 and 8 and 9 are part of the erosion based on the Department of Health code. There has been severe erosion in that area; 5 or 6 years ago it was identified as a problem and the WPCA asked them to work on it and we communicated with the Army Corps of Engineers and we got on the list and this year, they designed a solution. The project is covered under Section 14 money, Capital Improvement Program and they received a letter from Robert Russo from the Army Corps of Engineers and they are capped at \$1.5 million for each project and the nonprofit bearing is 35%. They have done the preliminary design and will do the final one and the Department has an award letter for the project. There were questions on the \$700,000. We will owe the corps \$573,000 when we sign the agreement and it will spell out our 35% of the project. We do this with DOT where they estimate the cost and contribute to a force account and it is constructed and if there is money left over, it is rebated to the parties and that is 35% to the City. There was a question on the amount of contingency. He states it is high because there are two parts to the project. The first is the NEAPA and environmental permits; the second part of the project that the Army doesn't do is acquisition of State and local permits and that adds on to the project and that was the amount we left, \$135,000 which is the issuance of the bond and what may happen locally with the project. They have addressed a number of concerns from DEP, but he doesn't know if they might not add more. They want to issue debt to \$573,000 as an on demand deposit to Army Corps.

#### **Noted for the Record**

Councilman Serra takes his seat at 6:26 p.m.

Mr. Russo continues Mr. Erlacher can probably take it out of the general fund and repay when they go out to debt; they left the reserve and they are not sure they will need it. Councilman Klattenberg states the general fund debt service is from the general fund. Mr. Russo states it will come out of Water and Sewer rates. Councilman Klattenberg states because so much of the shoreline is being worked on was any consideration being given to a boat launch. Mr. Russo states not in this area and it is within the area of drinking water. North of this area has been the subject of a boat ramp and launch. That area is subject to erosion and they did show it to the Army Corps of Engineers. We had a road failure in the area and fixed it through the CRISP program. When the Army does their cost factoring it has to have an immediate benefit and when they looked at it, it was only the road and there

was no cost benefit for the wells. Councilman Klattenberg thanks Mr. Russo.

Councilman Loffredo asks for the Director of Finance or Personnel Director.

**Noted for the Record**

Councilman Daley takes his seat at 6:30 p.m.

Councilman Loffredo asks Mr. Erlacher, Director of Finance for clarification on the negotiations for the current MMPA contract, my recollection is you and the former City Attorney played a substantial role in negotiations. Mr. Erlacher responds from five years ago, yes.

Councilman Pessina asks for Bill Russo, Director of Public Works. He asks for rate of the showmobile and what is the present rates. Mr. Russo states the present hourly rate is \$110 in town and \$140 out of town per hour. Councilman Pessina states I needed that information and asks if he can call another Director in reference to this resolution. Councilman Pessina asks for Acting Chief McMahon and asks him how much or if there was police coverage on the event. Acting Chief McMahon responds he believes there was. He believes they had two officers. Councilman Pessina asks for the hourly rate. The Acting Chief responds it is the hourly rate of the officer.

Councilman Klattenberg asks for Faith Jackson. He asks on agenda item 12-4 which is the policy for Affirmative Action and various policies and when I read through the exhibits, it was confusing to him because he did not know what the most current versions of them were. The first is Affirmative Action and EEO and then the policy in draft form and then the words have not been deleted. Are these final. Ms Jackson responds the top copy is A, the revised policy with 12/10 date is the final version of what the policy will look like and be distributed. Item B is a copy of the revision so you can see where the words were deleted or moved somewhere else

**Noted for the Record**

Councilman Faulkner takes his seat at 6:35 p.m.

She continues Copy C is the old policy so you can compare. Not much has changed. Councilman Klattenberg states that is his questions; it appears editorial changes have occurred. Ms Jackson responds yes; there was a change in State statute regarding same sex unions and she reworded that information in the policies. She wanted the language uniform. Councilman Klattenberg states the policies are not changing. Ms Jackson responds no; it is clarifying what the director's responsibility is and what the employee is supposed to do if they have a complaint. Councilman Klattenberg states it seemed thorough. Ms Jackson replies they wanted to ensure it was thorough.

Councilman Bauer asks for the record, these policies, who do they apply to. Ms Jackson responds they apply to everyone. Councilman Bauer asks for a better idea who everyone is. Ms Jackson responds first to City employees; they are the only ones who can be disciplined under these policies. The Mayor is the only one who can enforce the recommendations of these policies after investigation. They expect the Council to comply with the policies, but the Mayor cannot discipline you, but we still expect you to abide by them. Councilman Bauer states other people involved and volunteers and other elected officials do you consider all of them bound by these policies. Ms Jackson responds yes; the people who sit on boards and commissions should follow them; they are posted throughout City Hall. We have to have them posted by State and Federal law. Councilman Bauer asks about people who visit City Hall, what is the expectation on them when they are in the buildings. Ms Jackson states to conduct themselves in an appropriate manner; a City employee can complain about some rude and irate individuals and they can make a complaint to the police. Councilman Bauer states you make a distinction. Ms Jackson responds discipline is the employees, but there is an expectation for others to adhere to the policies. They are posted for everyone to review them. Councilman Bauer asks are there policies to be signed annually for personal usage of City property, phones, internet. Ms Jackson states there is an electronic monitoring policy and they are distributed and they do have to sign off. That is what the State expects. The departments should hold a meeting about them and employees should sign off on them.

Councilman Pessina asks to address questions to the City Attorney. He states Channel 3 News had something on the residency argument that may come up on the confirmation of Chief McMahon. I guess going back a few months you informed us that it has to be an objective vote and we have to look at the confirmation the Chief's experience and background to meet the job qualifications and we are not to add subjectivity to the vote. If the residency issue is brought forward tonight does that fall under subjectivity.

Acting City Attorney Lynch states his opinion, he is in compliance. Councilman Pessina states based on the fact he owns property, pays taxes, and votes here. Attorney Lynch states he is active in the community and meets every qualification of residency. Councilman Pessina states if it is brought forward where is the legal standing; is there ramifications here. Attorney Lynch states he is not sure he understands the question. As discussed in October, it is the Council's duty to confirm the choice; the Mayor makes the appointment and the Council is a check to the Mayor and the Council's charge is to see if the candidate meets the qualifications.

Councilman Streeto asks what a subjective and objective factor is to consider. Attorney Lynch responds if he meets the qualifications of the job and subjective would be whether or not you like the man. Councilman Streeto states personal feelings versus qualification. Attorney Lynch responds yes. Councilman Streeto asks if they can consider his performance. Attorney Lynch states objectively there isn't anything to consider; he has not been written up. But objectively looking at the qualifications. Councilman Streeto asks about the process. Attorney Lynch responds it is the Mayor's domain. Councilman Streeto states didn't other Council's look at the performance. Attorney Lynch responds and Councilman Streeto asks if he checked minutes to see if that has occurred. Attorney Lynch responds he believes they may have. Councilman Streeto asks about the Charter and what they wanted. Attorney Lynch replies he has looked at case law regarding confirmation; it is a statutory conclusion that it is confirm. Councilman Streeto asks if it was what was in the Middletown Charter. Attorney Lynch discusses that it is principles of statutory construction. Councilman Streeto asks if there are other factors and you are saying it is exclusive for the Mayor and isn't there case law to the effect that a governmental entity rendered a time tested use, don't they give to it. Attorney Lynch responds not with clear language and they won't. Councilman Streeto asks if it is advise and consent. Attorney Lynch responds he doesn't think so. Councilman Streeto asks if there is case law interpreting Charter with advise and consent. Attorney Lynch states he didn't find anything and not with the Middletown Charter. Councilman Streeto asks if he looked at past charters; Attorney Lynch states the language to 1977 has remained consistent. Councilman Streeto asks where it came into play. Attorney Lynch responds he believes it may have always been there. He is not sure if there is any Charters available before that. Councilman Streeto states at the Russell Library. He asks what the appropriate factors for this body is and issues with his personality would be off limits and no one has issues with it and the process is not appropriate, are there other factors to look at other than job qualifications. Attorney Lynch replies the job description and if he meets the job description. Councilman Streeto states even if we have a history, we can't make a comparison of that activity positive or negative to the job requirements. Attorney Lynch states he doesn't understand how the history can do anything. He has not been disciplined. If for example the members of the Council disagrees with how he put the budget together, that is under the Mayor. If you have a disagreement, but he doesn't know of anything that he has been officially criticized for. If we did something differently to perform the duties that is a subjective factor and different from being written up. Councilman Streeto asks what other factors. Attorney Lynch responds he doesn't know; it is straight forward. Councilman Streeto states what you are really on is generalized statutory interpretation and there is no case law. Attorney Lynch states there is no case law for the Middletown Charter and he is relying on other laws.

Councilman Serra states your opinion, on the word domiciled. What is the definition which is in the ordinance. Attorney Lynch responds lives here. Councilman Serra states sleeps here. Attorney Lynch responds yes.

Councilman Daley asks Attorney Lynch if he reviewed the Charter back to 1977 and did not look at Charters prior to that and from 1977 to now, how many directors, deputy directors nominations from various Mayors and do you know how many have been denied by the Council. Attorney Lynch responds he can't think of any that the Council voted down. Councilman Daley states one in 1995. Was that an invalid action; was that based on objective or subjective criteria. Attorney Lynch responds he doesn't know the Council's reasons for voting it down. I don't know if it was objective or subjective. Councilman Daley asks if Attorney Bourne was qualified for the Town Clerk's position. Attorney Lynch responds he doesn't know. Councilman Daley asks if a practicing attorney would be qualified. Attorney Lynch responds I think so. Councilman Daley states you are stating that Council shall confirm is meaningless and that we have no choice on it. Attorney Lynch states he doesn't think so. If the Mayor brought forward Bill Pillarella as Chief of Police, you should vote him down. Councilman Daley states you're taking this position and advocating for the appointment is wholly unethical; it should be against your code as an Attorney. I am totally

outraged that there are other directors advocating and trying to intimidate the Council to vote a certain way and it will not happen. Attorney Lynch replies I disagree with your analysis of the situation.

Councilman Klattenberg states I looked at the minutes for Chief Aylward and the minutes of those meetings are nothing like what they are now and Ms Norwood's minutes are detailed and what struck me was for the agenda for that meeting. It was to act upon the Mayor's appointment, not to confirm but there was subjective discussion taking place to review the candidate. The agenda item tells me what you are advocating is far fetched. Attorney Lynch states he doesn't read it that way. He doesn't see it as more than confirmation. Councilman Klattenberg states in using your someone not qualified for that position because that person would make it through the personnel review process to get to this point. That is ludicrous. Attorney Lynch states he respectfully disagrees. Councilman Klattenberg responds you are saying anyone who comes to the Council should be confirmed and what Councilman Daley states, it is an assessment process and you are saying we are rubber stamping. Attorney Lynch states there has been rigorous reviews of the candidate.

Councilwoman Kleckowski asks whether or not we have specific hours on how you define domicile. Attorney Lynch responds he is not sure he understands the question. Councilwoman Kleckowski states is it four days a week or one day a week. Attorney Lynch states legally you have to look at it and the important language is permanent residency defined domiciled in the City and actually resides in the City and this is not met by having a mailing address. He meets the requirement by owning a home, voting in the community; he heard criticism, but you saw people here in October come forward and speak on his behalf. That is deep roots in the community. It is not how many days, belonging to a church in town. Councilwoman Kleckowski asks to address questions to Debra Milardo, Personnel Director.

Councilman Loffredo would like clarification. He asks if there is a written opinion. Attorney Lynch responds no; he was not asked to do it and he is not advocating for Patrick. Councilman Loffredo states you did a tremendous amount of research. Attorney Lynch responds he was asked by the administration and this Council in October. Councilman Loffredo states in terms of the duties and responsibilities; when an individual comes forward as a director and the individual during the interview process, when one presents and attests they plan to comply and understand the City's residency requirements and sets it forth and they are prepared to meet the standard and it is reviewed to what value is the candidate's response and to what degree do we hold them responsible for their response. Attorney Lynch states in this situation if the feeling is he did not meet the residency requirement, the Council should have done something. Instead of innuendo, action should have been taken. Councilman Loffredo asks who would do the termination. Attorney Lynch responds the Mayor. Councilman Loffredo states based on that representation, the candidate said they needed more time and the Council granted it understanding the residency requirement. Attorney Lynch states other candidates received an extension on that ordinance. It is permissible to ask for more time. Councilman Loffredo states there are other members of this Council in confirming and not confirming based on their understanding and that essential duties have not been fulfilled is that due process to not vote for the candidate. Attorney Lynch asks if it is past conduct. Councilman Loffredo responds yes, the conduct we have observed and seen as outlined as part of essential duties. Attorney Lynch asks what the objective standards would be. I am assuming it is this candidate as acting has not fulfilled the job duties. Councilman Loffredo states we are here to make what we determine in the best interest of the community and with all due respect, we can observe, evaluate and determine whether certain duties are done and can't we make independent judgment. Attorney Lynch responds what are we basing that independent judgment; is it a subjective you or subjective standard that you were written up or a third party objective. Councilman Loffredo states if a candidate was asked if they were objectively evaluated you can show me the answer is no. He asks what happens if there is never an evaluation. Councilman Loffredo states if I am aware of things from personal observation and evaluation, it has no bearing on what I am doing this evening. Attorney Lynch responds the Council has a number of committees that directors are staff and if they have fallen below and did you question them in the committee or bring it up to the Mayor. If we had questioned the candidate and nothing was done by the administration, absent that we lay ourselves over a charge of subjective or political. Councilman Loffredo states there is a job description. Attorney Lynch responds and you quiz him on it.

**Motion to Adjourn**

Councilman Serra moves to adjourn and his motion is seconded by Councilman Pessina. There is no discussion and the vote is called. It is unanimous to adjourn and the Chair declares it at 7:12 p.m.

ATTEST:

MARIE O. NORWOOD  
Common Council Clerk